

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK JAMES FISHER,

Defendant-Appellant.

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UNPUBLISHED

October 31, 2006

No. 264299

Tuscola Circuit Court

LC No. 96-006920-FH

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

MEMORANDUM.

Defendant Mark James Fisher appeals by delayed leave granted the trial court's order denying his motion to vacate orders of reimbursement. We vacate and remand. We decide this appeal without oral argument.<sup>1</sup>

After Fisher's jury trial,<sup>2</sup> the trial court entered an order requiring him to reimburse the county \$7,293.53 for the cost of court-appointed counsel. Subsequently, the trial court entered an order requiring Fisher to pay a late fee of \$1,470.70, and to pay other fees totaling \$196.40, and it directed the Department of Corrections to withdraw funds from Fisher's prisoner account to pay the fees owed. Fisher moved to vacate the orders on the grounds that he was incarcerated and remained indigent. The trial court denied the motion without explanation.

The trial court abused its discretion by ordering Fisher to reimburse the county for the cost of his appointed counsel without first determining if he was financially able to do so.<sup>3</sup> Accordingly, we vacate the orders of reimbursement and remand this matter to the trial court to

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<sup>1</sup> MCR 7.214(E).

<sup>2</sup> A jury convicted Fisher of armed robbery, MCL 750.529, first-degree home invasion, MCL 750.110a(2), larceny in a building, MCL 750.360, and cutting telephone lines, MCL 750.540. However, in *People v Fisher*, unpublished opinion per curiam of the Court of Appeals, issued March 23, 1999 (Docket No. 202821), another panel of this Court vacated the larceny conviction, affirmed the remaining convictions, and remanded for resentencing.

<sup>3</sup> *People v Dunbar*, 264 Mich App 240, 251-255; 690 NW2d 476 (2004); see MCR 6.005(C).

consider Fisher's ability to pay and, if appropriate, enter an order for reimbursement commensurate with his ability to pay.<sup>4</sup>

Vacated and remanded. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Henry William Saad

/s/ Bill Schuette

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<sup>4</sup> *Id.* at 256.